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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/878,908	06/19/1997	KARL-LUTZ LAUTERJUNG	09114/005001	8837

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EXAMINER

PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 11/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/878,908

Applicant(s)

LAUTERJUNG, KARL-LUTZ

Examiner

Paul B. Prebilic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25, 28, 32, 33, 36 and 63-65 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32, 33 and 36 is/are allowed.
- 6) ☒ Claim(s) 63-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 63-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliot et al (US 4,041,931). Elliot anticipates the claim language where the tubular graft as claimed is the vein (30) of Elliot, which has a free end joined to the aorta and a second unjoined free end (see Figure 4). The ring comprising overlapping windings of wire as claimed is met by split ring (12) with eyelet (22) respectively; see column 2, line 36 et seq. The windings of Elliot are considered to be overlapping concentrically, to the extent claimed, because they are of the same diameter and aligned with each other. Since any physical ring has a finite width, the center thereof cannot be said to be a single dimensionless point. In addition, the ring is coaxial with the tubular graft even though the windings are not such that the claim language is fully met in this regard.

With regard to claims 64 and 65, the minimum bending diameter would inherently be smaller as claimed if the eyelet (22) were stressed as shown in Applicant's Figure 2 because the eyelet (22) is the same structure as that claimed.

Claims 63-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus (US 5,275,622). Lazarus anticipates the claim language where the tubular graft as claimed is the graft (121) of Lazarus (see Figures 10 and 11), the ring as claimed is spring means (131) of Lazarus, and the bundle of overlapping wires as

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claimed are any of the helical coil springs (136) of Lazarus; see column 8, lines 25-66. The windings are interpreted in the same manner as with the earlier Elliot rejection in that they are not required to be concentric with the graft.

With regard to claims 64 and 65, the minimum bending diameter as claimed is inherently present if the coil spring (136) is stressed as in Figure 2 of Applicant's disclosure because it is the same structure as claimed.

Claim 63 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartenbach (US 3,833,940). Hartenbach anticipates the claim language where the ring as claimed is the flexible section or hose (8) of Hartenbach (see Figure 4), the tubular graft as claimed is the connecting piece (9) of Hartenbach and the bundle of overlapping windings as claimed are the longitudinally adjacent windings of Hartenbach which overlap each to the extent claimed; see column 2, line 55 to column 3, line 16 and Figures 3b and 4.

Response to Arguments

Applicant's arguments filed June 16, 2003 have been fully considered but they are not persuasive.

In response to the traversal of the Elliot and Lazarus rejections, the Examiner asserts that the claim language is still read on by the structures thereof. The rejection statements thereof have been changed to address the new language of the claims.

In response to the traversal of Hartenbach that the turns are not overlapping but close to each other, the Examiner asserts that since the turns are shown touching each other or at least very close to each other that the claim language for overlapping is

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fully met. The term overlapping doesn't require any more than the windings be close to one another.

In response to the traversal of the claim 65 rejection that the minimum bending diameter is not inherent thereto, the Examiner asserts that the minimum bending diameter is inherent thereto because the same structure as set forth in the claims is present in the applied art. For this reason, it is necessary that the minimum bending diameter be fully met.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dereume et al (US 5,723,004) read on the claimed invention of claim 63 and 66 because the graft (see Figure 1) is a wide ring as claimed and is made of at least one overlapping resilient wire.

Ryan et al (US 6,576,009) is cited because it discloses rings on the ends of grafts, but it is not clear whether the wires are overlapping or not; see Figure 1 and column 8, lines 20-52.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Prebilic whose telephone number is (703) 308-2905. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for this Technology Center is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 3700 receptionist whose telephone number is (703) 308-0858.


Paul Prebilic
Primary Examiner
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